

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 999 of 1999

in

SPECIAL CIVIL APPLICATION No 4381 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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IDRISBHAI IBRAHIMVALI PATEL

Versus

DISTRICT EDUCATION OFFICER  
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Appearance:

MR HJ NANAVATI for Appellant

Mr S P Hasurkar for Respondent No. 1  
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CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and  
MR.JUSTICE D.P.BUCH

Date of decision: 27/12/1999

## ORAL JUDGEMENT

This appeal is filed against the interim order passed by the learned Single Judge in Special Civil Application No. 4381 of 1999 on 23.6.1999. The learned Single Judge passed the following order:

"Shri S P Hasurkar for the petitioner. Shri H J Nanavaty for respondent No.1 on caveat. Heard led.counsel for the parties. Rule returnable on 16.7.99 only for resp. 2 & 3. D.S. permitted. The operation of the order dt. 21.9.98 of the Guj.Sec.Edu.Tribunal at Ahmedabad in Application No.261/98 is stayed. On returnable date office is directed to place this matter on the final hearing board for hearing."

2. The appellant is a Teacher employed by the Chanchal Sarvajanic Kelevani Mandal, Taluka Vagra, District Bharuch. It is not in dispute by and between the parties that it is the School which is a minority school covered by Section 40A of the Gujarat Secondary Education Act, 1972.

3. Since the appellant was not paid his salary, he approached the Gujarat Secondary Education Tribunal (for short, 'the Tribunal') by filing Application No.261/98. the Tribunal, vide its order dated September 21, 1998, allowed the petition overruling the objection raised by the Department. The authority did not permit payment of salary to the present appellant on the ground that the School was covered under the Direct Payment Scheme (for short 'DPS'). Since prior to the appointment of the appellant "No objection" certificate was not obtained by the School, it was not entitled to salary of the said Teacher and that it will have to be borne by the Institute.

4. The Tribunal, after considering the facts and circumstances, held that in view of the fact that the Institute was a minority Institute, it was entitled to appoint the appellant and the action of the authority was violative of Article 30 of the Constitution of India.

5. Being aggrieved by the said order, above petition was filed by the District Education Officer and as said above, the petition was admitted and interim relief is granted. It is against that order that the present LPA is filed only by the Teacher. The Institute has not challenged the decision of the learned Single Judge.

6. Initially Notice was issued by the Division Bench. We had admitted the appeal and issued notice as to final hearing. We have heard Mr H J Nanavati, learned counsel for the appellant and Mr S P Hasurkar, learned counsel for the respondent No.1. None appears for respondents No.2 and 3.

7. Mr Nanavati submitted that the order passed by the learned Single Judge is illegal and in contravention of Section 40A of the Gujarat Secondary Education Act, 1972 (for short, 'the Act'). Section 40A of the Act reads as under:

"40A. Nothing contained in clause (23) of section 17, sections 34 and 35, and clause (b) of sub-section (1) and sub-sections (2), (3), (4) and (5) of section 36 shall apply to any educational institutions established and administered by a minority, whether based on religion or language."

Mr Nanavati submitted that if the provisions of Section 35 which requires appointment to be made in a particular manner are also not applicable to a minority Institute, the department cannot insist that appointment must be made of a surplus Teacher in a minority School and on that ground it cannot withhold the amount to which the appellant is otherwise entitled. In any case, it was submitted by Mr Nanavati that when the Tribunal had passed the order and directed the payment to be made, the learned Single Judge ought not to have interfered with the said order at the admission stage virtually allowing the petition filed by the department. He, therefore, submitted that this is a fit case which deserves to be allowed.

8. Mr Hasurkar, on the other hand, raised preliminary objection that the order in question is merely an interlocutory order and this Court may not interfere with such interim order on merits. He submitted that the action cannot be said to be illegal, unconstitutional or violative of Article 30 of the Constitution.

9. Our attention was invited by the learned counsel to several decisions including a decision in *In re Kerala Education Bill, 1957*, AIR 1958 SC 956, *St: Xaviers' College v. State of Gujarat*, AIR 1974 SC 1389 and *Frank Anthony P.S.E. Asscn. v. Union of India*, AIR 1987 SC 311.

10. In our opinion, the law laid down by the Supreme Court in those cases would not apply to the facts of the present case. Moreover, the main matter is pending before the learned Single Judge. A limited question before us is as to whether the learned Single Judge could have granted interim relief against the order passed by the Tribunal, in the light of the provisions of Section 40A of the Act. In our view, no such order could have been passed by the learned Single Judge. Only on that ground and without entering into the merits of the matter, the stay granted by the learned Single Judge is hereby vacated and the LPA is allowed to that extent.

11. We may, however, state that as and when the matter will be taken up for final hearing by the Court, that Court will decide the same in accordance with law without being influenced in any manner by the observations made by us hereinabove. Learned counsel for the respondent also stated that the Institute has not filed an appeal and it is a relevant fact. It is open to him to raise that contention also before the learned Single Judge.

12. The LPA is accordingly allowed. In the facts and circumstances, no order as to costs. It is open to the learned counsel for the respondent to request the learned Single Judge to take up the matter for early disposal.

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msp.